

to require transfer disclosures for all authorizations obtained through competitive bidding. See NPRM at ¶¶ 88-91. Metrocall begs to differ with these proposals insofar as they would prevent incumbents from engaging in transactions in the ordinary course of business. Where incumbents are negotiating for the sale of one's business to the other, or have applications pending for assignments of licenses or transfers of control, those legitimate transactions should not be disrupted by the Commission's announcement of the short-form filing deadline or prevented from closing by the length of time it takes to conduct auctions for geographic licenses. Part 22 of the rules already provides for an exemption to the "cut-off" rules for amendments to applications to reflect changes of ownership found by the Commission to be in the public interest. See 47 C.F.R. § 22.123. Metrocall respectfully requests that that exemption be incorporated into the wide-area licensing and auction rules for all paging services, so that legitimate acquisition plans will not be impaired.

Moreover, where an incumbent paging licensee obtains a geographic license, and subsequently decides to sell its business, the transfer disclosure requirements of 47 C.F.R. § 1.2111(a) are unnecessary to discourage speculation and prevent unjust enrichment. Licensees who have been providing service to the public for years (in some cases more than a decade) before the Commission considered subjecting them to auctions, will not be entering those auctions as a "gold rush" to obtain spectrum for profitable resale. Many of the participants in the paging auction will be ongoing businesses and long-time Commission licensees; those incumbent-participants should not be prevented from continuing to enter into legitimate business arrangements. While Metrocall would not oppose such disclosure requirements where a "newcomer" seeks to assign or transfer its geographic license shortly after auction, licensees with

proven records of providing service to the public do not raise "trafficking" concerns and should not be required to comply with burdensome reporting requirements designed to prevent trafficking.

#### **X. IRFA Comments.**

Section 603 of the Regulatory Flexibility Act requires the FCC to determine the "expected impact on small entities" of the policies and rules proposed in this NPRM. The new Telecommunications Act of 1996 also requires this agency to, within 15 months following enactment of that law, to "identify and eliminate ... market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services ...." 47 U.S.C. § [257(a)].

The Commission's Initial Regulatory Flexibility Analysis ("IRFA"), at Appendix A to the NPRM, states the Commission's belief that its proposals "are expected to benefit small entities" and notes that various of the NPRM's proposals are "designed to facilitate small businesses' ability to access capital and to enter the wireless market" and "lessen the administrative burden on small entities." Metrocall respectfully submits that, despite the various proposals in the NPRM designed to assist "designated entities," the awarding of paging authorizations by auctions will make entry by small businesses into the paging market more difficult.

Auctions will substantially increase the costs of doing business. It can hardly be doubted that the requirement of paying large sums of money -- perhaps millions of dollars -- for a bare license is a significant entry barrier to a would-be telecommunications provider. It should also be facially obvious that "small entities" will be unable to bear the administrative burden of participating in at least 1,800 simultaneous multiple round auctions.

Metrocall respectfully submits that a far better approach would be to lower entry barriers, by holding auctions only where there is a true mutually exclusive situation that cannot be resolved through settlement. That approach will allow more companies to enter the market, it will ease financial and administrative burdens on small, incumbent paging operators, and will allow these companies the opportunity to generate FCC regulatory fees, that will sustain the FCC's operations.

### **CONCLUSION**

For the foregoing reasons, Metrocall respectfully requests that the Commission carefully consider the impact that the proposals in its NPRM will have on incumbent paging licensees, and adopt licensing rules consistent with these Comments that will protect the rights of incumbents and the members of the public they serve.

Respectfully submitted,

METROCALL, INC.

By:

Frederick M. Joyce  
Christine McLaughlin

Its Attorneys

JOYCE & JACOBS, Attorneys at Law, L.L.P.  
1019 19th Street, N.W.  
Fourteenth Floor - PH2  
Washington, D.C. 20036  
(202) 457-0100

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### **CERTIFICATE OF SERVICE**

I, Regina Wingfield, a legal secretary in the law firm of Joyce & Jacobs, Attys. at Law, LLP, do hereby certify that on this 18th day of March, 1996, copies of the foregoing Comments of Metrocall, Inc. were mailed, postage prepaid, to the following:

**Chairman Reed Hundt\***  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

**Jay Kitchen, President**  
PCIA  
500 Montgomery Street, Suite 700  
Alexandria, VA 22314-1561

**Commissioner Andrew C. Barrett\***  
Federal Communications Commission  
1919 M Street, N.W., Room 826  
Washington, DC 20554

**ITS**  
1919 M Street, N.W., Room 246  
Washington, DC 20554

**Commissioner Rachelle B. Chong\***  
Federal Communications Commission  
1919 M Street, N.W., Room 844  
Washington, DC 20554

**A. Thomas Carroccio, Esq.**  
Bell, Boyd & Lloyd  
1615 L Street, NW., Suite 1200  
Washington, D.C. 20036

**Commissioner Susan Ness\***  
Federal Communications Commission  
1919 M Street, N.W., Room 832  
Washington, DC 20554

**John L. Crump**  
d/b/a ACE Communications  
11403 Waples Mill Road, P.O. Box 3070  
Oakton, VA 22124

**Commissioner James H. Quello\***  
Federal Communications Commission  
1919 M Street, N.W., Room 802  
Washington, DC 20554

**George V. Wheeler, Esq.**  
Koteen & Naftalin  
1150 Connecticut Avenue, N.W.  
Washington, D.C. 20036

**Michelle Farquhar, Chief\***  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, NW., Room 5002  
Washington, D.C. 20554

**Donald J. Evans, Esq.**  
McFadden, Evans & Sill  
1627 Eye Street, N.W., Suite 810  
Washington, D.C. 20006

**David Furth, Acting Chief\***  
Commercial Wireless Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 7002  
Washington, D.C. 20554

**Jill Abeshouse Stern, Esq.**  
**Robert J. Cynkar, Esq.**  
**Janice H. Ziegler, Esq.**  
**Edmund D. Daniels, Esq.**  
Shaw, Pittman, Potts & Trowbridge  
2300 N Street, N.W.  
Washington, D.C. 20037

Veronica M. Ahern, Esq.  
Nixon, Hargrave, Devans & Doyle  
One Thomas Circle  
Washington, D.C. 20005

Michael J. Shortley, III, Esq.  
180 South Clinton Avenue  
Rochester, NY 14646

William L. Fishman, Esq.  
Sullivan & Worcester, LLP  
1025 Connecticut Avenue, N.W.  
Suite 1000  
Washington, D.C. 20036

Alan S. Tilles, Esq.  
Meyer, Faller, Weisman & Rosenberg  
440 Jenifer Street, N.W., Suite 380  
Washington, D.C. 20015

Jeanne M. Walsh, Esq.  
Kurtis & Associates, P.C.  
2000 M Street, N.W., Suite 600  
Washington, D.C. 20036

Jack Richards, Esq.  
Keller and Heckman  
1001 G Street, N.W., Suite 500 West  
Washington, D.C. 20001

Thomas Gutierrez, Esq.  
J. Justin McClure, Esq.  
Lukas, McGowan, Nace & Gutierrez  
1111 19th Street, N.W., 12th Floor  
Washington, D.C. 20036

William J. Franklin, Esq.  
William J. Franklin, Chartered  
1200 G Street, N.W., Suite 800  
Washington, D.C. 20005-3814

Lucille M. Mates, Esq.  
Pacific Bell  
140 New Montgomery Street, Rm 1526  
San Francisco, CA 94105

James L. Wurtz, Esq.  
Mariyaret E. Garber, Esq.  
Pacific Telesis Group - Washington  
1275 Pennsylvania Avenue, N. W.  
Suite 400  
Washington, D.C. 20004

Judith St. Ledger-Roty, Esq.  
Paul G. Madison, Esq.  
Reed, Smith, Shaw & McClay  
1301 K Street, N.W.  
Suite 1100 - East Tower  
Washington, D.C. 20005

Phillip L. Spector, Esq.  
Thomas A. Boasberg, Esq.  
Paul, Weiss, Rifkind, Wharton & Garrison  
1615 L Street, N.W.  
Washington, D.C. 20036

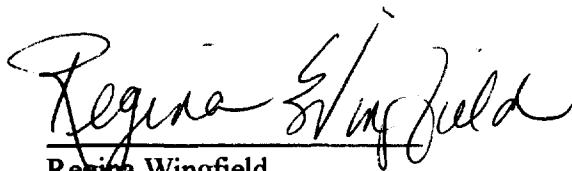
Amelia L. Brown, Esq.  
Henry A. Solomon, Esq.  
Haley, Bader & Potts  
4350 N. Fairfax Drive, Suite 900  
Arlington, VA 22203-1633

George L. Lyon, Jr., Esq.  
David Nace, Esq.  
Lukas, McGowan, Nace & Gutierrez  
1111 19th Street, N.W., 12th Floor  
Washington, D.C. 20036

Timothy E. Welch, Esq.  
Hill & Welch  
1330 New Hampshire Ave., NW, Suite 113  
Washington, D.C. 20036

Carl W. Northrop, Esq.  
1299 Pennsylvania Ave., N.W.  
10th Floor  
Washington, D.C. 20004

Harold Mordkofsky, Esq.  
John Prendergast, Esq.  
Blooston, Mordkofsky, Jackson &  
Dickens  
2120 L Street, N.W., Suite 300  
Washington, D.C. 20037



Regina Wingfield

\* Denotes Hand Delivery